

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1597

Introduced by Assembly Member Laird

February 22, 2005

An act to ~~amend Section 11364.7~~ *add Chapter 1.5 (commencing with Section 120780) to Part 4 of Division 105 of the Health and Safety Code, relating to drug paraphernalia.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1597, as amended, Laird. Drug paraphernalia.

~~With certain exceptions, existing~~ *Existing law, with certain exceptions,* makes it a misdemeanor for a person to deliver, furnish, ~~or~~ transfer, possess with intent to deliver, furnish, or transfer, or manufacture with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Existing law provides an exception to this general rule by authorizing a public entity, its agents, or employees to distribute hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.

This bill would ~~make a technical, nonsubstantive change to existing law~~ *authorize a public entity that receives General Fund money from the State Department of Health Services for HIV prevention and education to use that money to support clean needle and syringe*

exchange projects authorized by the public entity. The bill would authorize the money to be used for the purchase of sterile hypodermic needles and syringes. The bill would require the use of that money to be based upon local epidemiological statistics as to the incidence of HIV transmission through injection drug use.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11364.7 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 ~~SECTION 1. The Legislature finds and declares all of the~~
4 ~~following:~~

5 ~~(a) The continuing spread of the acquired immune deficiency~~
6 ~~syndrome (AIDS) epidemic and the spread of blood-borne~~
7 ~~hepatitis pose two of the gravest public health threats in~~
8 ~~California.~~

9 ~~(b) Injection drug users are the second largest group at risk of~~
10 ~~becoming infected with the human immunodeficiency virus (HIV)~~
11 ~~and developing AIDS, and they have been the primary source of~~
12 ~~heterosexual, female, and perinatal transmission in California,~~
13 ~~the United States, and Europe.~~

14 ~~(c) According to the Office of AIDS, injection drug use~~
15 ~~continues to be one of the most prevalent risk factors for new~~
16 ~~HIV and AIDS cases in California. Injection drug users continue~~
17 ~~to be at high risk of HIV/AIDS and hepatitis infection in~~
18 ~~California. According to an annual report issued by the Office of~~
19 ~~AIDS within the State Department of Health Services, sharing of~~
20 ~~contaminated syringes and other injection equipment is linked to~~
21 ~~20 percent of all reported AIDS cases in the state through 2003.~~
22 ~~State data suggests that over 1,500 new syringe sharing~~
23 ~~infections occur annually.~~

24 ~~(d) Injection drug users are also highly likely to become~~
25 ~~infected with hepatitis as a result of hypodermic needle and~~
26 ~~syringe sharing practices.~~

27 ~~(e) The Legislature has responded to the spread of HIV and~~
28 ~~hepatitis among injection drug users by adopting Assembly Bill~~
29 ~~136 (Chapter 762, Statutes of 1999), which permits localities to~~
30 ~~determine whether or not to operate clean needle and syringe~~

exchange programs. As a result of that legislation, many localities are now operating these programs.

(f) These programs have been shown to significantly reduce the transmission of HIV and hepatitis among injection drug users, their sexual partners, and children.

(g) The United States government prohibits the use of federal funds to support the purchase of sterile hypodermic needles and syringes by clean needle and syringe exchange programs, and the state has not heretofore permitted the use of its funds for the purchase of sterile hypodermic needles and syringes.

(h) The ability of clean needle and syringe exchange programs to purchase an adequate supply of sterile hypodermic needles and syringes is essential to California's ability to further reduce the transmission of HIV and hepatitis and to relieve the public cost for the care and treatment of HIV disease and hepatitis.

SEC. 2. Chapter 1.5 (commencing with Section 120780) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 1.5. STATE HIV PREVENTION AND EDUCATION FUNDS

120780. A public entity that receives General Fund money from the State Department of Health Services for HIV prevention and education may use that money to support clean needle and syringe exchange projects authorized by the public entity pursuant to subdivision (a) of Section 11364.7. The money may be used for, but is not limited to, the purchase of sterile hypodermic needles and syringes. The use of that money shall be based upon local epidemiological statistics as to the incidence of HIV transmission through injection drug use.

~~11364.7. (a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body, a controlled substance, except as~~

1 provided in subdivision (b), in violation of this division, is guilty
2 of a misdemeanor.

3 No public entity, its agents, or employees shall be subject to
4 criminal prosecution for distribution of hypodermic needles or
5 syringes to participants in clean needle and syringe exchange
6 projects authorized by the public entity pursuant to a declaration
7 of a local emergency due to the existence of a critical local public
8 health crisis.

9 (b) Except as authorized by law, any person who manufactures
10 with intent to deliver, furnish, or transfer drug paraphernalia
11 knowing, or under circumstances where one reasonably should
12 know, that it will be used to plant, propagate, cultivate, grow,
13 harvest, manufacture, compound, convert, produce, process,
14 prepare, test, analyze, pack, repack, store, contain, conceal,
15 inject, ingest, inhale, or otherwise introduce into the human body
16 cocaine, cocaine base, heroin, phencyclidine, or
17 methamphetamine in violation of this division shall be punished
18 by imprisonment in a county jail for not more than one year, or in
19 the state prison.

20 (c) Except as authorized by law, any person, 18 years of age or
21 over, who violates subdivision (a) by delivering, furnishing, or
22 transferring drug paraphernalia to a person under 18 years of age
23 who is at least three years his or her junior, or who, upon the
24 grounds of a public or private elementary, vocational, junior
25 high, or high school, possesses a hypodermic needle, as defined
26 in paragraph (7) of subdivision (a) of Section 11014.5, with the
27 intent to deliver, furnish, or transfer the hypodermic needle,
28 knowing, or under circumstances where one reasonably should
29 know, that it will be used by a person under 18 years of age to
30 inject into the human body a controlled substance, is guilty of a
31 misdemeanor and shall be punished by imprisonment in a county
32 jail for not more than one year, by a fine of not more than one
33 thousand dollars (\$1,000), or by both that imprisonment and fine.

34 (d) The violation, or the causing or the permitting of a
35 violation, of subdivision (a), (b), or (c) by a holder of a business
36 or liquor license issued by a city, county, or city and county, or
37 by the State of California, and in the course of the licensee's
38 business shall be grounds for the revocation of that license.

1 ~~(e) All drug paraphernalia defined in Section 11014.5 is~~
2 ~~subject to forfeiture and may be seized by any peace officer~~
3 ~~pursuant to Section 11471.~~

4 ~~(f) If any provision of this section or the application thereof to~~
5 ~~any person or circumstance is held invalid, it is the intent of the~~
6 ~~Legislature that the invalidity shall not affect other provisions or~~
7 ~~applications of this section which can be given effect without the~~
8 ~~invalid provision or application and to this end the provisions of~~
9 ~~this section are severable.~~

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